IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 54 OF 2005

Basant Kumar Jain. ... Appellant.

Versus.

Chief Executive Officer,
Maharashtra Industrial Development
Corporation. ... Respondents.

Dr.Arun Kumar Barthakur for the Appellant.

Ms.Deepa Chavan for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 16th February, 2005.

P.C.:

1. This Second Appeal is filed by the unsuccessful Plaintiff. The Appellant filed a suit for declaration that he is entitled to get Plot No.A-2 in H Block, MIDC Pimpri Industrial Area at the rate prevailing on 10th January 1986. A declaration is also claimed that the Respondents have no legal right to allot Plot No.A-2 in H Block or any other plot in H Block in MIDC for any other use other than what has been approved in the layout. The trial Court decreed the suit by directing that the said plot be allotted to the Appellant. An Appeal was preferred by the Respondents in the District Court and in the said Appeal, the decree of the trial Court has been set aside.

2. The learned Counsel appearing for the Appellant has argued the following substantial questions of law:

(i) Whether the respondent-plaintiff has acted according to law and justice, equity and good conscience by refusing to allot the suit plot to the appellant-defendant who was the only applicant for the suit plot at the relevant time on the ground that it was reserved for amenity purpose, and there after calling tenders for allotment of the said plot for the purpose of setting up a departmental store and thereafter once again for the purpose of setting up a show-room ?

(ii) Whether a plot could be reserved for amenity without compliance with section 2(a) of the MIDC Act requiring the State Government to specify such a plot or its user as an amenity by publishing a notification in the official gazette ?

(iii) Whether the respondent-defendant has not violated the fundamental right guaranteed to the appellant-plaintiff under Article 14 of the Constitution of India by refusing to allot the suit plot to him according to the principle of "first-come-first-served" consistently followed by it for allotting plots by entertaining individual applications

under Regulation No.4(ii) of the MIDC Disposal of Land Regulations ?

He submitted that the allotment was governed by the principle of first-come-first-served. He submitted that the allotment was denied to the Appellant only on the ground that it was reserved for amenity purpose and subsequently tenders were called for by the Respondents for allotment of the said plot for the purpose of setting up a departmental store. He submitted that there is a discrimination practiced by the Respondents while applying the principle of first-come-first-served. He submitted that others have been allotted reserved plots and the Respondents have practiced discrimination against the Appellant. He has pointed out the pleadings and evidence on record.

3. The learned Counsel for the Respondents supported the impugned Judgment and Decree of the Appellate Court by pointing out various findings.

4. I have considered the rival submissions. From the averments made in the plaint it is seen that the Appellant has applied for allotment of the plot for industrial use. The case of the Appellant is that he was wrongly denied allotment of the plot on the ground that the plot was reserved for amenities. It is his case that later on the suit plot was sought to be

allotted for setting up a show room.

5. It is necessary to refer to the issues framed by the trial Court. Issue No.2 framed by the trial Court reads thus:

(2) Whether the suit plot was exclusively reserved for an industry?

The trial Court has recorded a finding that the suit plot was not reserved for any industrial or for any other purpose and the purpose of reservation has not been defined. In paragraph 5 of the plaint, the Appellant has asserted that plot No.A-2 was to be kept exclusively for setting up an industry. From the finding recorded by the trial Court on issue No.2, it is very clear that the Appellant has failed to prove the said assertion. A perusal of the Judgment of the Appellate Court shows that it is not argued by the Appellant that the finding recorded by the trial Court on issue No.2 is incorrect. Thus it is clear that the Appellant went to the Court with a clear case that plot No.A-2 is reserved for setting up an industry and has failed to prove the said allegation.

6. It is to be noted here that it is not the case of the Appellant that now the said plot is sought to be allotted by the Respondents for industrial purpose and

in fact now admittedly the plot is advertised for allotment for setting up a showroom.

7. In so far as the case of discrimination is concerned, the Appellant has not impleaded the parties in whose favour the Respondents have allegedly discriminated. In so far as the allotment of plot to one Page is concerned, the Respondents have produced the letter of allotment in support of their case showing that part of plot No.A-1 was allotted to him as he was a project affected person.

7. The Appellate Court has held that the Appellant cannot claim allotment of the said plot as a matter of right. After having failed to establish that the plot was reserved for industrial use, the learned trial Judge was not justified in passing a decree of mandatory injunction in favour of the Appellant.

8. After having considered the rival submissions I find that no substantial question of law arises in the Second Appeal. The Second Appeal is accordingly dismissed with no order as to costs.

9. At this stage the learned Counsel appearing for the Appellant prays that the Respondents should be restrained from allotting the suit plot to any third party for a reasonable time. He submits that the

Appellant desires to challenge this order in higher Court. The said request deserves to be granted. The Respondents will not allot the suit plot to any third party, if not allotted till today, for a period of eight weeks from today.

Judge.